



IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NOS. WR-80,755-01, WR-80,755-02

EX PARTE JOSE ANTONIO BANDA, Applicant

ON APPLICATIONS FOR WRITS OF HABEAS CORPUS
CAUSE NOS. 1306394-A AND 1306395-A IN THE 230TH DISTRICT COURT
FROM HARRIS COUNTY

Per curiam.

ORDER

Pursuant to the provisions of Article 11.07 of the Texas Code of Criminal Procedure, the clerk of the trial court transmitted to this Court this application for a writ of habeas corpus. *Ex parte Young*, 418 S.W.2d 824, 826 (Tex. Crim. App. 1967). Applicant pleaded guilty to two charges of aggravated robbery, and was sentenced to twenty years' imprisonment in each case, with the sentences to run concurrently. He attempted to appeal his convictions, but the appeals were dismissed for want of jurisdiction, because the trial court certified that these were plea bargain cases, and Applicant had no right to appeal. *Banda v. State*, Nos. 14-12-00189-CR and 14-12-00190-CR (Tex. App. – Houston [14th Dist.] April 17, 2012).

Applicant contends that his trial counsel rendered ineffective assistance because counsel

failed to investigate the procedure by which Applicant was identified as the robber or interview eyewitnesses, filed a motion to withdraw from the representation and ceased to actively represent Applicant after that motion was denied, and promised Applicant that he would receive probation if he entered an open plea to the trial court and admitted his guilt.

Applicant has alleged facts that, if true, might entitle him to relief. *Strickland v. Washington*, 466 U.S. 668 (1984); *Ex parte Patterson*, 993 S.W.2d 114, 115 (Tex. Crim. App. 1999). In these circumstances, additional facts are needed. As we held in *Ex parte Rodriguez*, 334 S.W.2d 294, 294 (Tex. Crim. App. 1960), the trial court is the appropriate forum for findings of fact. The trial court shall order trial counsel to respond to Applicant's claims of ineffective assistance of counsel. The trial court may use any means set out in TEX. CODE CRIM. PROC. art. 11.07, § 3(d).

If the trial court elects to hold a hearing, it shall determine whether Applicant is indigent. If Applicant is indigent and wishes to be represented by counsel, the trial court shall appoint an attorney to represent Applicant at the hearing. TEX. CODE CRIM. PROC. art. 26.04.

The trial court shall make findings of fact and conclusions of law as to what advice counsel gave Applicant with respect to his options for pleading guilty or going to trial on the charges. The trial court shall make findings as to whether counsel advised Applicant that by entering an open plea pursuant to a pre-sentence investigation (with an agreed "cap" of 25 years' imprisonment) he could receive any sentence between five and twenty-five years' imprisonment and would not be able to appeal. The trial court shall make findings as to whether counsel promised Applicant that he would receive probation if he admitted his guilt and entered an open plea. The trial court shall make findings as to whether the performance of Applicant's trial counsel was deficient and, if so, whether counsel's deficient performance prejudiced Applicant. The trial court shall also make any other

findings of fact and conclusions of law that it deems relevant and appropriate to the disposition of Applicant's claim for habeas corpus relief.

These applications will be held in abeyance until the trial court has resolved the fact issues. The issues shall be resolved within 90 days of this order. A supplemental transcript containing all affidavits and interrogatories or the transcription of the court reporter's notes from any hearing or deposition, along with the trial court's supplemental findings of fact and conclusions of law, shall be forwarded to this Court within 120 days of the date of this order. Any extensions of time shall be obtained from this Court.

Filed: February 5, 2014
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